

INTERSECTION OF LAW AND PSYCHOLOGY: ROLE OF PSYCHOLOGY IN MEDIATION

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Abstract

Every relationship or bond at least at one point faces a lot of differences and difficulties in holding the bond. Sometimes the difference rises to that point that the parties take legal action against the other party. Many times in the litigation process the difference instead of going to a phase of compromise and a mutual disposal takes a drastic turn and increases the density of the problem as both the parties start framing accusations against the other party and the scope of mutually resolving the matter becomes zero. For this, under The Mediation Act, 2023 we have the provision of Mediation.

Simply stated, mediation is defined as "assisted negotiation," a process whereby an independent third party assists two or more parties in conflict to arrive at their own settlement. Mediation provides a fair process and facilitates discussion without taking decisions. Mediation is favored for its ability to maintain the relationship between the parties involved while at the same time making the process faster, less aggressive, and more friendly. While in litigations, the involved parties are often hostile to each other, mediation is characterized by communication, cooperation, and understanding. This makes it quite relevant when there is a disagreement between family members, work colleagues, management and workers, among other situations, where it is important to maintain future relations. Also, mediation ensures privacy, saves time, and reduces legal costs, thus becoming more realistic in resolving disputes.

This paper is divided into three main parts , the first part will be covering the introduction of mediation followed by the Psychology factors used to understand mediation. The second part will be covering the Philosophical Foundations of Human Conflict and other factors of Psychology used for successful mediation and the last part will be covering the criticism and the conclusion part. The question arises whether the role of psychology is even important in understanding mediation , the simple answer is Yes as a lot of human emotions and personal interests are involved in mediation.

Keywords - Mediation , Psychology , Conflict , Emotions , Expectations

Introduction

In case of conflict resolution, the connection between psychology and law has emerged as an important area for multidisciplinary research. The field of psychology focuses on behavioral aspects, emotions, cognition, and interpersonal relations. On the other hand, law is often concerned with rights and duties. Legal problems may actually involve psychological issues such as emotions, miscommunication, cognitive distortions, distrust, etc., instead of mere legal issues. It is imperative to understand the psychological implications of conflict within the realm of law in order to ensure that there is successful dispute resolution on a considerable scale. The rise in interest regarding psychology within the sphere of law has paved the way for more humane forms of justice. As a result of being flexible, confidential, and collaborative, among other characteristics, mediation has come out as one of the most important forms of ADR. Mediation is an alternative dispute resolution technique that involves a third party who acts as a mediator with the aim of facilitating effective communication between the two parties with conflicting interests. As opposed to adversarial litigation, mediation encourages dialogue, cooperation, and problem-solving through collaboration and not by enforcing a legally binding solution on the parties involved. In addition to having the legal skills needed for mediation, a mediator's capacity to identify emotional issues, communication problems, behavior traits, and interests that might not be clearly articulated by the disputants is equally crucial.

The growing recognition of psychology in legal dispute resolution is not confined to academic discourse but has found practical expression in India's institutional development. Indian forensic psychologists and conflict resolution practitioners are increasingly engaged in court-annexed processes, and recent years have witnessed a broader appreciation of the need to incorporate psychological expertise into legal proceedings at multiple levels, spanning criminal investigations, competency assessments, and alternative dispute resolution mechanisms.

The reason is that, in many cases, conflicts arise due to personal perceptions, emotions, and misunderstandings and not purely legal issues. There are many elements that have a profound effect on how people perceive and respond to conflicts and the efforts made to resolve them, including frustration, fear, pride, stress, trauma, personal involvement, and cognitive distortions. Through creating opportunities for active listening, emotional acknowledgment, reframing of the situation, and positive communication, a mediator who is psychologically knowledgeable may be able to reduce hostilities and foster participation. In this way, mediation may be considered as a psychologically oriented conflict resolution technique rather than merely a legal one. Mediation is a very important instrument in the current Indian judicial process, where there is always an extensive number of cases pending and litigation can be long drawn out, that is essential for ensuring justice is delivered in a convenient, efficient, and friendly manner. The urgency of this need is underscored by statistical data on judicial pendency: as of December 2023, over 5 crore cases were pending across Indian courts, reflecting an annual increase of approximately 3.5 per cent, and in 2023 alone, 34 judges of the Supreme Court presided over approximately 70,000 cases, illustrating the scale of the crisis that drives the search for alternative dispute resolution mechanisms.¹ The need for ADR mechanisms like mediation, which helps minimize conflict and achieve amiable outcomes, has been stressed many times by the judiciary.

Nevertheless, the psychology of behavior, emotions, communication methods, and perspectives of the parties plays an important role in the success of the mediation process, as it does not solely rely on the law. Hence, it becomes necessary that the mediator as well as the larger legal system understands the importance of psychology in the process of reaching efficient and sustainable solutions. This research aims to understand the role of psychology in mediation for the purpose of

¹ Sugam Agarwal and Smruti Ranjan Behera, 'Mammoth Backlog of Court Cases Pending in India: A Spatial Visualisation' (2024) 11(1) Regional Studies, Regional Science 757 <https://doi.org/10.1080/21681376.2024.2425328>

improving judicial efficiency and promoting a more humane justice system. The rising acceptance of psychological theories in resolving conflicts can be seen through the laws of mediation in India. The Mediation Act of 2023² is built around a number of principles that include voluntariness, confidentiality, neutrality, and self-management, all of which have deep ties with psychology such as communication skills, emotional control, and trust. The institutional significance of the Mediation Act, 2023 also lies in its comprehensive procedural architecture: the Act introduces pre-litigation mediation, online mediation, and community mediation as distinct forms, establishes the Mediation Council of India as a regulatory body, and provides for the legal enforceability of mediated settlement agreements, thereby lending formal legal weight to a process that was previously characterised by structural ambiguity and limited statutory recognition.³ To decrease cases of litigious behavior and resolve disputes through peaceful means, there are provisions in Section 89 of the Code of Civil Procedure, 1908⁴ that compel courts to settle cases through alternative dispute resolution mechanisms such as mediation.

Understanding mediation Through Psychology

The role of psychology becomes important in mediation as in matters mostly coming to the mediation not only involves a problem but mostly includes a Person. Suppose It starts with two people who appear before the mediator. It has been decided that divorce may be the only option since there is currently disagreement between the individuals. In case of a normal litigation procedure, the two would file a suit sooner or later, and they would complete their legal procedure after which their marriage would be dissolved. However, the first aim of mediation involves identifying the root cause of their conflict and coming up with a solution acceptable to both parties, whether by discussing issues regarding divorce or trying to save and mend their relationship.

² The Mediation Act, 2023, Department of Legal Affairs, MoL &J, GoI (Oct. 30, 2024), <https://legalaffairs.gov.in/actsrulespolicies/mediation-act-2023>.

³ Shirin Khajuria, 'Reimagining Justice Through Mediation: An Analysis of The Mediation Act, 2023' (Law School Policy Review, 8 August 2025) <https://lawschoolpolicyreview.com/2025/08/08/reimagining-justice-through-meditation-an-analysis-of-the-meditation-act-2023/>

⁴ Jay Soni, The Code Of Civil Procedure, 1908, (May 13, 2008), <https://sclsc.gov.in/theme/front/pdf/ACTS%20FINAL/THE%20CODE%20OF%20CIVIL%20PROCEDURE,%201908.pdf>.

- Emotions in Conflict

As humans are by nature emotional beings, emotions play a crucial role in influencing the actions and perceptions of individuals and in how they relate to others around them. Human beings experience a range of emotions in everyday life, depending upon the environment and experiences around them. Some of the instances of emotion that regularly influence people's reaction and behavior towards other individuals include anger, ego, fear, anxiety, trauma, emotional involvement, and bias. It is impossible to get rid of emotions altogether; however, they can certainly be controlled through self-restraint and emotional intelligence. Nevertheless, when individuals are not able to manage their emotions, their actions will be driven by impulse and emotion leading to misunderstanding, hostility, and conflict. More often than not, what appears to be a legal conflict in fact is an indication of deeper psychological and emotional conflicts. Emotions tend to make human conflicts more severe while inhibiting logic, as is shown both by modern research into psychology and ancient philosophy. Research in the field of conflict psychology has consistently identified that interpersonal disputes are driven not merely by factual disagreements but by underlying emotional states including fear, shame, and perceived threats to identity. Active listening, empathy, and nonverbal communication have been shown to be critical tools for bridging misunderstandings and promoting constructive dialogue in conflict situations, with a significant portion of human interaction conveyed through nonverbal channels such as body language, tone, and facial expression.⁵ Since the process of resolving a dispute requires not only legal analysis but also the ability to manage emotions and psychology surrounding the situation, an understanding of emotional behavior becomes very important in mediation.

- Role of Mediator as a Psychological Facilitator

During the mediation process, parties often express not only their legal grievances but also their emotions, frustrations, insecurities, and personal perceptions. In such cases, the

⁵ Center for Nonviolent Communication, 'The Psychology of Conflict' (CNVC, 2005)
<https://www.cnvc.org/learn/research/the-psychology-of-conflict>

mediator acts as a psychological guide as well as a neutral third party who endeavors to decipher the emotional conditions of the parties involved. Because it requires a great deal of emotional intelligence, patience, and social awareness to be able to remain neutral but at the same time understand the problems, motivations, and emotional pain experienced by both parties, understanding emotions is one of the most important soft skills a good mediator has. The ability to recognize issues such as underlying conflicts, emotional stimuli, communication barriers, and concealed interests is critical for a mediator to see through the process.

The function of psychological knowledge in mediation is somewhere also connected with the principles of Cognitive Behavioral Theory, reflected in the famous observation of Epictetus that, “*Men are disturbed not by things, but by the views which they take of them.*”⁶ This concept underscores how the actions of humans tend to be motivated by their own views, opinions, and interpretations rather than simply by what actually is going on around them. Deliberately or not, mediators employ this understanding in order to find the root cause of the conflict and the mental model used by the parties to understand their conflict. The application of principles drawn from Cognitive Behavioural Therapy to conflict resolution has received empirical support. A study published in the *Primary Care Companion CNS Disorders* journal (2025) tested the effectiveness of a cognitive restructuring strategy in conflict mediation and found that it was effective in promoting cognitive restructuring, psychological acceptance, and a reduction in anxious and depressive symptoms among parties in conflict, lending direct empirical support to the relevance of cognitive reframing in mediation practice.⁷ Also, mediators adopt the method of active listening where mediators get a chance to understand the emotions, motivations, and concerns behind what the parties say in addition to their voices. This enables mediators to ensure that positive communication is facilitated, any hostility is reduced, an understanding between the parties is fostered, and they reach an acceptable solution together. Mediation is an effort not only towards reaching a legal resolution but also

⁶ <https://www.goodreads.com/quotes/899017-men-are-disturbed-not-by-things-but-by-the-views>.

⁷ Rafael Thomaz da Costa, Marcele R de Carvalho and Antonio E Nardi, 'Conflict Mediation by Cognitive-Behavioral Therapy: A New Psychotherapeutic Strategy' (2025) 27(3) *Primary Care Companion CNS Disorders* 24m03895 <https://doi.org/10.4088/PCC.24m03895>

towards emotional reconciliation in complicated scenarios, particularly family and spousal issues. Mediation also aims to preserve relationships and reconnect wherever feasible.

Philosophical Foundations of Human Conflict

Many cultural philosophies throughout time have always recognized the fact that internal situations within man such as ego, desire, attachment, repressed emotions, and even the clash between one's personality and society can be sources of disagreements. Western and Eastern philosophies have made valuable contributions to the influence of morality, mental perception, emotion, and beliefs on behavior and conflict. The philosophical backgrounds become relevant in the context of mediation because mediation is characterized by the use of dialogue, understanding, and emotional articulation to handle not only legal but also emotional and behavioral components of conflicts.

1. Friedrich Nietzsche and Codified Morality

Many conflicts arise out of internal emotional dissatisfaction that is not expressed. It would therefore be impossible for all conflicts among people to be understood in terms of law and behavior. A comprehensive analysis of strict systems of morality and social systems was provided by *Friedrich Nietzsche*, who stated that highly structured social systems tend to suppress individuality, expression, and true human emotions. As per Nietzsche, humans can feel unhappy, jealous or conflicted within themselves because their emotions, beliefs, and true selves are always being controlled by pre-existing social institutions and the societal norms. Interpersonal clashes, jealousy, or aggression can often be seen as external manifestations of emotional repression. In such a context, mediation can be considered as a process that provides individuals with a safe space for communicating their feelings, unspoken narratives, and hidden problems that conventional litigation processes are unable to provide. Through mediation, the emotional distance between the disputants is minimized through the process of communication, expression of emotion, and psychological recognition compared to the conventional courtroom process.

The psychological implications that arise from extreme detachment and the collapse of interpersonal relationships can be seen in the later years of the famous Friedrich Nietzsche. Nietzsche was isolated emotionally and intellectually from society because of his unwavering refusal to accept the standards of society and its moral principles. For Nietzsche, the “free spirit” is a person that increasingly distances himself from the underlying premises which are necessary for all social intercourse and thus reduces the possibility of fellowship and understanding; an example here is Nietzsche’s philosophy character Zoroaster.⁸ This solitude provides an example as to how the absence of socialization and communication leads to increased mental pain and inner turmoil. In contrast, Mediation can be viewed as an approach that seeks to avoid emotional isolation between disputants, discourse, and communication as opposed to alienation. Mediation maintains human connections while minimizing the destructive impacts of emotional and social alienation because mediation creates a place where individuals are listened to, comprehended, and emotionally recognized instead of letting disputes turn into alienation and enmity.

2. Eastern Perspective - Moksha and Mental Liberation

It should be noted that while the psychological causes of human conflict and suffering have been identified by Western philosophy, the same has been done in Eastern philosophies as well. In order to maintain inner calm and sound judgment, the Holy *Bhagavad Gita* highlights the significance of self-control, detachment, and mental equilibrium.

In Chapter 2, Verse 62 -

ध्यायतो विषयान्पुंसः सङ्गस्तेषूपजायते

सङ्गात्सञ्जायते कामः कामात्क्रोधोऽभिजायते ॥ 62 ॥⁹

The verse explains that It is found that the human mind ultimately forms an emotional attachment because of continuous contemplation regarding tangible things and needs. It is from the emotional attachment that expectations and desires arise; but if these expectations

⁸ James Bishop, What was Friedrich Nietzsche’s View of Christianity?, (June 27, 2016), <https://jamesbishopblog.com/2016/06/27/friedrich-nietzsche-speaks-about-christianity/>.

⁹ BG 2.62: Chapter 2, Verse 62, Bhagavad Gita, The Song of God Swami Mukundanandan <https://www.holy-bhagavad-gita.org/chapter/2/verse/62/>.

and desires fail to get satisfied, they lead to psychological dissatisfaction and irritation. Most disputes in mediation arise due to people becoming emotionally attached to either their own assumptions, egos, associations, assets, prestige, or notions of justice, making dialogue and compromise difficult. This emotional investment often exacerbates the hostility between the parties and prevents any rational understanding of the concerns of the other party.

In Chapter 2, Verse 63 -

*क्रोधाद्भवति सम्मोहः सम्मोहात्स्मृतिविभ्रमः ।
स्मृतिभ्रंशाद् बुद्धिनाशो बुद्धिनाशात्प्रणश्यति ॥ 63 ॥*¹⁰

The verse explains the psychological effects on the individuals of unchecked emotional reactions by saying that anger generates delusion, which in return leads to the loss of memory and logical comprehension and finally, the destruction of wisdom. The loss of "wisdom" can be described as that stage where the individual is no longer able to think rationally, converse peacefully or make proper decisions. It might eventually end up causing disharmony in society, relationships, and mental peace. In some extreme cases, the whole life of an individual mainly being personally, socially or emotionally – may become ruined because of uncontrolled anger and emotions. Mediation seeks to provide an environment that allows participants to express their emotions, cool off, re-establish communication, and restore logical reasoning through dialogue and reflection, with the objective of interrupting this destructive cycle of the psyche. Consequently, mediation can be regarded as a method to restore emotional balance, preventing the psychological deterioration that can be brought about by unresolved conflicts aside from solving legal disputes.

To conclude , the Bhagavad Gita's philosophical teachings show how emotional attachment, ego, unbridled cravings, and distorted mental conceptions are all closely

¹⁰ BG 2.63: Chapter 2, Verse 63, Bhagavad Gita, The Song of God Swami Mukundanandan <https://www.holy-bhagavad-gita.org/chapter/2/verse/63/>.

related to human problems. The psychological decline that often underpins interpersonal and legal problems is shown in the transition from attachment to rage and finally to the loss of wisdom. In this context, the function of mediation acts not only as a process of resolving conflict but rather as a way to help both parties gain balance emotionally and mentally, as well as develop healthy communication skills. The purpose of this is to prevent the conflict from escalating to something that permanently damages both parties psychologically and socially. Therefore, the Bhagavad Gita's teachings support the notion that long-term conflict resolution necessitates not just legal remedies but also mental harmony and emotional awareness.

Role of Psychology in Successful Mediation

Role of Mediator, especially in mediation, is not only being merely an unbiased legal institution but rather acts as a psychological facilitator who attempts to understand behavioral and emotional facets of the dispute. Psychology behind human behavior, feelings, perceptions, and communication patterns plays a significant role in mediation processes along with the legal processes and legislation put forth. Given that the purpose of the mediation process is conflict resolution via understanding and agreement rather than coercion, psychology is essential in the process of mediation. Mediation as a means of reducing the workload of the courts as well as ensuring that the case is resolved amicably out of court through the use of an outside party to help facilitate negotiations is increasingly becoming significant in the Indian context considering the increase in the number of pending cases. Mediation requires that all parties involved be sincere and openly express their concerns. Mediation is different from adversarial litigation in that, while people engaged in disputes in adversarial cases often focus on disproving each other's claims, mediation seeks to transform a dispute into constructive discussion and collaboration.

It can be clearly seen from the discussion provided above that factors such as anger, suspicion, fear, insecurity, ego, and misunderstanding among people play an important role in conflict cases brought forward to mediation. Building up confidence, therefore, is one of the most important aspects of the mediation process. When parties are convinced that the mediator acts in a fair,

equitable, confidential and competent manner, then they become more likely to discuss their problem freely and open-mindedly. Trust building becomes essential because it helps the parties assume responsibility for their actions, apologize for any misunderstandings, and analyze the real reasons for the dispute. Emotional outbursts often prove necessary in a psychologically supportive environment, making the atmosphere less hostile and enabling dialogue between the parties. Also, the ability of a mediator to identify emotional triggers, manage discomfort, and channel the discussion into a more positive path can be attributed to the amount of emotional intelligence the mediator has. The mediator should also be equipped with active listening skills, as listening does not only refer to the act of hearing what the parties say, but understanding the underlying emotions behind their remarks. Because silent behavior, body language, tone of voice, facial expression, and other behavioral reactions often show the emotions that cannot be shown by words, the role played by nonverbal expression and behavioral observation in mediation is especially significant. Therefore, for the mediator to ensure that the mediation process is effective, it is important for the mediator to be able to identify and interpret the emotions. In conclusion, psychology is not only an auxiliary of mediation but a core element that increases the efficiency of resolving legal conflicts as well as creating an emotionally sensitive judicial process.

Challenges

1. *Emotional Trauma and Psychological Distress*

In cases where the disputing parties have undergone serious emotional and psychological distresses, one of the primary disadvantages of psychology in mediation is encountered. Individuals who have previously suffered from financial losses, emotional breakdowns, abuse, or abandonment will find it hard to communicate rationally or engage in meaningful negotiations. The effects of the trauma may cloud their perceptions, reduce their trust, and prevent them from being able to mediate. Mediation in such cases is more of an emotional burden rather than therapy. Hence, in order for mediation to succeed, individuals who are emotionally vulnerable will require therapeutic or legal intervention. Also, unresolved trauma can be such that both parties might misunderstand any innocuous comment as being an assault on their person, thereby creating increased hostility among the mediators and

more misunderstandings between the parties. In extreme cases, psychological instability may result in one party holding more power than the other, hence making it difficult to achieve mutual consent.

2. *Dominant Behavioural Traits*

When either one or both parties demonstrate a tendency towards narcissism or being too controlling, then mediation will not be easy. People with such characteristics often consider themselves more important than arriving at a decision. They may end up hindering productive negotiation by dominating discussions, dismissing other opinions, and not making compromises. The clinical and practitioner literature on this challenge identifies that narcissistic traits in mediation, including a sense of entitlement, a lack of empathy, and the use of gaslighting or blame-shifting, can turn the mediation forum into a site of power struggle and emotional exploitation rather than cooperative resolution.¹¹ Where one party has been diagnosed with, or exhibits the behavioural markers of, Narcissistic Personality Disorder, the mediator's traditional neutrality may inadvertently empower the aggressor and disadvantage the more vulnerable party, necessitating additional safeguards such as separate caucusing sessions, involvement of legal representatives, and carefully structured communication rules.¹² Whereas the psychology of individuals may be used by mediators to spot such behavior, it may not necessarily have the capacity to overcome strongly rooted personalities. It therefore becomes extremely difficult to facilitate successful mediation in some circumstances, leading to not only unsuccessful mediation but also creating a lot of differences by adding more layers to the dispute.

3. *Manipulation Behaviour*

Rather than compromising, individuals may try to take advantage of the mediation process through manipulation to their own benefit. This can include intimidation, partial information, stories, and fake cooperation in order to influence the outcomes unfairly.

¹¹ Cripps, 'Dealing with Narcissists in Mediation: Strategies for Success' (Cripps, August 2025) <https://www.cripps.co.uk/thinking/dealing-with-narcissists-in-mediation-strategies-for-success/> accessed 6 June 2026.

¹² Jharna Jagtiani, 'When Neutrality Fails: Rethinking Mediation with Narcissists' (*Mediate.com*, April 2025) <https://mediate.com/when-neutrality-fails-rethinking-mediation-with-narcissists/>

Because mediation depends on participation and good communication as essential elements, psychological manipulation strategies may interfere with the balance and fairness of negotiations. Thus, this limitation underscores the importance of selecting well-trained mediators capable of detecting any abnormal behavior in order to maintain an equal process.

4. *Domestic Violence Disputes*

As a result of the concerns regarding the potential safety and psychological vulnerability of the victim, the use of mediation in such cases remains highly contentious. An abused individual may not be able to negotiate freely owing to the feeling of fear, dependence, intimidation, or suppression. Previous victimization often leads to an imbalanced emotional dynamic and inhibits voluntary participation. Mediation may inadvertently reinforce a system of coercive power when attempting to bring about justice in these cases. Thus, legal safeguards and proper case screening remain very important.

5. *Emotional Bias*

Interpretation of events from a subjective point of view and emotions may influence human behavior at times. It is difficult to speak objectively when individuals in the middle of a dispute approach the issue from an angry, resentful, egoistic, or prejudiced point of view. Even though psychology is able to help identify these psychological distortions, it would remain highly impractical to eliminate them entirely. The parties may not be willing to accept responsibility or consider other perspectives because of their psychological rigidity. It is for this reason that psychological intervention may prove highly impractical when the emotional conflicts become quite intense.

Conclusion

Legal matters are not usually confined only to legal matters as shown by the relationship between psychology and law, particularly in the field of mediation. Issues of emotions, perception, behavior patterns, communication barriers, trauma, ego, attachment, and experience of psychology all play an important role in human conflict and how humans react to it. Hence, it can be said that mediation comes about as a process, which is based on psychological concepts and tries to mend communication, emotional balance, and understanding between the conflicting parties, instead of being viewed as an alternative legal process. The concept of mediation attempts to deal with the emotional basis of the conflict, rather than the legal aspects of the problem, through such psychological theories as emotional intelligence, active listening, building trust, behavior analysis, and cognitive understanding. Philosophical concepts discussed in the study, for example, the thoughts of Friedrich Nietzsche as well as the philosophy of The Bhagavad Gita, are clear examples that show that the psychological basis for interpersonal and legal disputes often lies in unprocessed emotions, attachment, repressed feelings, and distorted perspectives.

However, according to this research, the use of psychology in mediation is also limited to a number of constraints. Some of the issues which limit the effectiveness of mediation are factors such as extreme emotional distress, manipulation, emotional inflexibility, narcissism, domestic violence, and psychological disturbances. They may also act as impediments to fair negotiations and voluntary participation. Thus, despite the fact that psychology adds great value to the mediation process, the proper application of the approach requires experienced mediators, good case analysis, ethical considerations, and full understanding of human behavior. With the help of mediation, which helps to reduce animosity between the disputing parties and encourages cooperation, the dispute can be settled effectively and compassionately, considering the problem of pendency in the Indian judiciary. Overall, however, this research demonstrates that psychology is more than just an addition to mediation; in fact, it is a key component, which enables the legal process to shift from a purely juristic process to a more humane and compassionate method of solving disputes.